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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,868	01/16/2007	Achim Fischer	P01130-US-00 (07/538.0501)	2230
23446	7590	03/08/2010	EXAMINER	
ICE MILLER LLP				
ONE AMERICAN SQUARE, SUITE 3100				
INDIANAPOLIS, IN 46282-0200				
			ART UNIT	PAPER NUMBER
			1793	
			MAIL DATE	DELIVERY MODE
			03/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,868

Applicant(s)

FISCHER ET AL.

Examiner

PATRICIA L. HAILEY

Art Unit

1793

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5 and 6 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S&C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicants' Preliminary Amendment, filed on February 2, 2006, has been made of record and entered. With the entry of this amendment, claim 6 has been amended to comply with U. S. Patent claim drafting standards, and the Specification has been amended to insert claim of priority information. No new matter has been added via these amendments.

Claims 1-6 remain pending in this application.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Applicants' Priority Document was filed on February 2, 2006.

Specification

2. ***The disclosure is objected to because of the following informalities:***

In the Specification, from page 7, line 32 to page 8, line 6, reference is made to "tests 9-13" exhibiting "picoline conversion of ca. 50%". However, in Table 1 of the Specification, test 13 exhibits a picoline conversion of 95%.

Additionally, the Specification, from page 7, line 32 to page 8, line 6, states that the "selectivity of the reaction to 3-cyanopyridine is high in each case, at \geq 85%". However, in Table 1, selectivities of 84% are depicted (tests 9, 13, and 14).

Appropriate correction is required.

Claim Objections

3. *Claim 4 is objected to because of the following informalities:*

In lines 2 and 3 of claim 4, the phrase "selected from the group pyridine, quinoline, pyridazine, pyrimidine, and pyrazine" should be "selected from the group consisting of pyridine, quinoline, pyridazine, pyrimidine, and pyrazine".

Appropriate correction is required.

Allowable Subject Matter

4. *Claims 1-3, 5, and 6 allowed.*

5. *Claim 4 would be allowable if rewritten to overcome the objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.*

6. *The following is a statement of reasons for the indication of allowable subject matter:*

The prior art of record does not teach or suggest the claimed VPO catalyst of the general formula recited in Applicants' claims, specifically the presence of a cyclic nitrogen compound. The prior art also does not teach or suggest the claimed method for manufacturing 3-cyanopyridine, wherein the aforementioned VPO catalyst is provided and combined with 3-methylpyridine, ammonia, and oxygen at temperatures up to 440°C.

While VPO catalysts are known in the art of ammoxidation processes (e.g., Rao et al., U. S. Patent No. 5,910,465), the prior art does not teach or suggest a VPO catalyst formulaically similar to that instantly claimed.

Ex parte Quayle

- 7. This application is in condition for allowance except for the following formal matters as stated above.***
- 8. Prosecution on the merits is closed in accordance with the practice under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).***

A shortened statutory period for reply to this action is set to expire TWO MONTHS from the mailing date of this letter.

- 9. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).***

An attempt to contact Applicants' Attorney was made on February 25, 2010, to propose an Examiner's Amendment to prepare the application for allowance; said attempt was not successful.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA L. HAILEY whose telephone number is (571)272-1369. The examiner can normally be reached on Mondays-Fridays, from 7:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melvin C. Mayes, can be reached on (571) 272-1234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1700 Receptionist, whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PATRICIA L. HAILEY/

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Primary Examiner, Art Unit 1793

March 1, 2010